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7  
8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF NEVADA

10 SMITA MAITY, as trustee of the MAITY  
11 MEDICAL ASSOCIATES DEFINED  
12 BENEFIT PLAN,

13 Plaintiff,

14 vs.

15 CALANT CAPITAL, LLC, an Nevada limited  
16 liability company; FIRST CONSOLIDATED  
INVESTMENT MANAGEMENT, INC., a  
17 Nevada corporation, d/b/a ELYSIEN  
18 PRIVATE WEALTH; ANTHONY  
DEPASQUALE, an individual; DAVEY  
19 INSURANCE MARKETING, INC., a  
California corporation, d/b/a PACE TPA;  
20 RICHARD CROMWICK, an individual;

21  
22 Defendants.  
23  
24  
25

Case No.:

**VERIFIED COMPLAINT**

- 1) Breach of Contract;  
2) Breach of the Covenant of Good Faith and Fair Dealing;  
3) Fraudulent or Intentional Misrepresentation;  
4) Constructive Fraud;  
5) Conversion;  
6) Securities Fraud NRS §§ 90.570, 90.660; Rule 10(k)  
7) Constructive Trust; and  
8) Violation of 29 U.S.C. § 1001 *et seq.* (ERISA).

**JURY DEMAND**

26 COMES NOW, Plaintiff, SMITA MAITY, as trustee of the MAITY MEDICAL  
27 ASSOCIATES DEFINED BENEFIT PLAN (hereinafter "Plaintiff"), by and through her  
28

1 Counsel HAROLD P. GEWERTER, ESQ. of HAROLD P. GEWERTER, ESQ, LTD, and for  
2 her Complaint against the Defendants, and each of them, alleges and avers as follows:

3  
4 **JURISDICTION AND VENUE**

5 1. This action is brought pursuant to 29 U.S.C. § 1001 et seq. Jurisdiction is based  
6 upon the “Employment Retirement Security Act of 1974,” as amended, (ERISA) and the  
7 aforementioned statutory provisions. The court further has jurisdiction pursuant to Section 10(b)  
8 of the Securities Act of 1933 and Rule 10(b)(5) as promulgated by the Securities and Exchange  
9 Commission (SEC). This Court has supplemental jurisdiction over any state law claims pled  
10 herein pursuant to 28 U.S.C. §1367.

11  
12 2. All material allegations relative to the named defendants contained in this  
13 Complaint are believed to have occurred in the State of Nevada, Clark County. Therefore,  
14 venue properly lies in the southern division of the United States Court for the District of Nevada  
15 pursuant to 28 U.S.C. §1391(b)(2).  
16

17 **PARTIES**

18 3. Plaintiff, Smita Maity is and was at all times material to this action an individual  
19 residing in the State of Nevada.

20 4. That at all times pertinent hereto, Plaintiff Maity was the trustee of the Maity  
21 Medical Associates Defined Benefit Plan.  
22

23 5. That the Maity Medical Associates Defined Benefit Plan is a retirement plan  
24 established pursuant to and governed by ERISA.

25 6. Defendant, Calant Capital LLC, is a Nevada limited liability company was at all  
26 times material to this action doing business in Clark County, Nevada as an owner of and/or an  
27 investor in certain businesses in Nevada.  
28

1           7. Defendant, First Consolidated Investment Management, Inc. is a Nevada  
2 Corporation which at all times material to this action was doing business in Clark County,  
3 Nevada as Elysien Private Wealth.

4  
5           8. That First Consolidated Investment Management Inc. d/b/a Elysien Private  
6 Wealth is and was at all times pertinent hereto a business which offered investment management  
7 services.

8  
9           9. Defendant, Anthony Depasquale, is and was at all times material to this action  
10 the Managing Member of Defendant Calant Capital, LLC.

11           10. That upon information and belief, Defendant Anthony Depasquale is and was at  
12 all times pertinent hereto the owner and de facto principle operator of Defendant First  
13 Consolidated Investment Management Inc. d/b/a Elysien Private Wealth.

14           11. That pursuant to the records of the Nevada Secretary of State, the officers of  
15 Defendant First Consolidated Investment Management Inc. are: Defendant Anthony  
16 Depasquale, Secretary; Anthony Depasquale, III, President; and Linne Depasquale, Director.

17  
18           12. That Plaintiff reserves the right to amend the instant Complaint to include  
19 Anthony Depasquale, III and Linne Depasquale as Defendants hereto as participants in the  
20 fraudulent scheme described *infra*.

21  
22           13. That Defendant, Davey Insurance Marketing, Inc., is a California corporation  
23 illegally doing business in the State of Nevada.

24           14. That Defendant Davey Insurance Marketing Inc. is and was at all times material  
25 to this action doing business in Clark County, Nevada as "PACE TPA" and/or "PACETPA."

1           15. That Defendant Davey Insurance Marketing, Inc. d/b/a PACE TPA is in the  
2 business of offering financial services including, but not limited to, defined benefit pension  
3 plans, 401(k) plans, profit sharing plans, and administration services.  
4

5           16. That Defendant, Richard Cromwick, is and was at all times pertinent hereto a  
6 pension plan specialist employed by Defendant Davey Insurance Marketing, Inc. d/b/a PACE  
7 TPA.  
8

9           17. That Defendant Richard Cromwick was at all times pertinent hereto acting in his  
10 capacity as a pension plan specialist in furtherance of his employment with Defendant Davey  
11 Insurance Marketing, Inc. d/b/a PACE TPA.  
12

**GENERAL ALLEGATIONS**

13           18. That Plaintiff is a medical doctor practicing in Las Vegas, Nevada and owner of  
14 Maity Medical Associates, Inc. ("Maity Medical").  
15

16           19. That on or about 2014, Maity Medical and Plaintiff opened a defined benefit plan  
17 with Defendant Davey Insurance Marketing, Inc. d/b/a PACE TPA.  
18

19           20. That said plan established the Maity Medical Associates Defined Benefit Plan, of  
20 which Plaintiff was the trustee and sole beneficiary.  
21

22           21. That Defendant Cromwick was the plan administrator of the Maity Medical  
23 Associates Defined Benefit Plan on behalf of Defendant Davey Insurance Marketing, Inc. d/b/a  
24 PACE TPA and pursuant to his employment therewith.  
25

26           22. That knowing the amount of assets held in the Maity Medical Associates Defined  
27 Benefit Plan, on or about 2015 Defendant Cromwick discussed said assets with Defendant  
28 Depasquale.

1           23.     That thereafter, all Defendants conspired to fraudulently convert the assets held  
2 by the Maity Medical Associates Defined Benefit Plan in violation of ERISA and Nevada state  
3 and federal securities laws.

4  
5           24.     That on June 12, 2015, Defendant Cromwick sent Plaintiff an email stating as  
6 follows:

7                   I met with Tony DePasquale who is vice president at Bank of New York  
8 Mellon last week and your name came up in conversation. Tony asked me if I  
9 would be willing to introduce the two of you.

10  
11                  In addition, we need to do an annual plan review. I would like to do [sic]  
12 set up a meeting and Tony mentioned he would buy lunch if you are open to  
13 meeting with us.

14                  I have known Tony for a long time, and he specializes in assessing risk  
15 inside of investment portfolios. What time in the next couple of weeks might  
16 work for you?

17  
18           25.     That over the course of the next two (2) years, Defendants Cromwick and  
19 Depasquale pressured Plaintiff into improperly investing the assets held by the Maity Medical  
20 Associates Defined Benefit Plan into Depasquale's various business ventures.

21  
22           26.     That on or about 2017, the Maity Medical Associates Defined Benefit Plan held  
23 cash and/or other assets valued at approximately SEVEN HUNDRED FIFTY THOUSAND  
24 DOLLARS (\$750,000.00).

25           27.     That on or about the fall of 2017, Defendants Cromwick and Depasquale  
26 persuaded Plaintiff to invest and loan the entirety of the assets held by the Maity Medical  
27 Associates Defined Benefit Plan into Defendant Calant Capital, LLC and/or Defendant First  
28

1 Consolidated Investment Management Inc. d/b/a Elysien Private Wealth so that Depasquale  
2 could open a Big Whiskey's American Restaurant & Bar franchise in Las Vegas, Nevada at  
3 Town Square.

4  
5 28. That Plaintiff at all times relied upon the advice of all Defendants.

6 29. That Defendants used deceit, fraud, bait-and-switch, lies, and other untoward  
7 tactics to induce Plaintiff to re-invest the assets held by the Maity Medical Associates Defined  
8 Benefit Plan.

9  
10 30. That Defendants induced Plaintiff to believe that the Maity Medical Associates  
11 Defined Benefit Plan would be an investor/owner of Depasquale's Big Whiskey's American  
12 Restaurant & Bar franchise.

13 31. That Defendants knowingly, falsely and fraudulently promised Plaintiff that the  
14 assets then-held by the Maity Medical Associates Defined Benefit Plan (approximately  
15 \$750,000.00 in 2017) would almost double in value by December of 2032 if Plaintiff would  
16 invest the Plan's assets into the Big Whiskey scheme.

17  
18 32. That Defendants Richard Cromwick and Davey Insurance Marketing, Inc. d/b/a  
19 PACE TPA drafted a document entitled "Maity Medical Associates, Inc. Consent Action of the  
20 Directors" which authorized Plaintiff to convey the money held by the Maity Medical  
21 Associates Defined Benefit Plan per Defendants' scheme.

22  
23 33. That the bottom of said "Maity Medical Associates, Inc. Consent Action of the  
24 Directors" contained the footnote "Copyright 2002-2013 PACE TPA."

25 34. That on December 8, 2017, Defendants Richard Cromwick and Davey Insurance  
26 Marketing, Inc. d/b/a PACE TPA obtained Plaintiff's signature on the "Maity Medical  
27 Associates, Inc. Consent Action of the Directors."  
28

1           35. That on December 8, 2017, Defendants obtained Plaintiff's signature on a "Loan  
2 Agreement" for the sum of \$750,000.00.

3           36. That said "Loan Agreement" was by and between Defendant Calant Capital,  
4 LLC ("Borrower") and Maity Medical Associates Defined Benefit Plan ("Lender").

5           37. That said "Loan Agreement" specifically stated that the loan was related "to a  
6 Big Whiskey's American Restaurant & Bar franchise."

7           38. That also on December 8, 2017, Defendant Calant Capital, LLC executed a  
8 Promissory Note in favor of Maity Medical Associates Defined Benefit Plan for \$750,000.00  
9 plus interest in the amount of \$10% over fifteen (15) years.

10           39. That pursuant to the agreements/notes, Defendant Calant Capital, LLC, would  
11 repay the loan by making monthly payments to Maity Medical Associates Defined Benefit  
12 Plan's Schwab One Trust Account.

13           40. That on December 11, 2017, Defendants induced Plaintiff to sign an "Investment  
14 Management Agreement" by and between Plaintiff and Defendant First Consolidated  
15 Investment Management Inc. d/b/a Elysien Private Wealth.

16           41. That said "Investment Management Agreement" was signed by Defendant  
17 Depasquale on behalf of Defendant First Consolidated Investment Management Inc. d/b/a  
18 Elysien Private Wealth.

19           42. That said "Investment Management Agreement" granted Defendant Depasquale  
20 the title of "Manager" over the Maity Medical Associates Defined Benefit Plan and its assets.

21           43. That on December 15, 2017, Defendant Depasquale sent Plaintiff the following  
22 email:

1 I just wanted to follow up with you. I spoke with Rich [Defendant Richard  
2 Cromwick], and we can open a 401(k) plan for you, but the plan would have to  
3 be established prior to the end of the year. We can contribute an additional  
4 \$51,000 of tax deductible investments per year (I am verifying the amounts with  
5 Rich) into this aspect of the plan.  
6

7 44. That on or about March of 2018, Defendant Calant Capital, LLC began making  
8 monthly loan payments to Maity Medical Associates Defined Benefit Plan's Schwab One Trust  
9 Account.  
10

11 45. That on or about March of 2019, Defendants opened their Big Whiskey's  
12 American Restaurant & Bar franchise.

13 46. That on or about August of 2019, Defendants' Big Whiskey's American  
14 Restaurant & Bar franchise closed.

15 47. That Defendant Calant Capital, LLC did not make its monthly loan payment to  
16 Maity Medical Associates Defined Benefit Plan.  
17

18 48. That pursuant to the Loan Agreement, Plaintiff notified Defendants Calant  
19 Capital, LLC and Anthony Depasquale that Calant was in default of the loan and that she was  
20 calling the entire loan due immediately.  
21

22 49. That after closing the Big Whiskey's American Restaurant & Bar franchise,  
23 Defendants then opened a Farmltable Kitchen + Spirits restaurant in the same location in  
24 November of 2019.

25 50. That on December 28, 2019, Defendant Depasquale attempted to change the  
26 terms of the 2017 Loan Agreement and Promissory Note by sending correspondence to Plaintiff  
27 which stated:  
28



1 This letter is an outline to repay the note for Calant Capital LLC. As of January  
2 2020, you will begin to receive monthly payments again on an ongoing basis,  
3 since we have re-opened and continued operations. By July of 2020, I will have  
4 a structured repayment take out your debt portion of the endeavor. I will keep  
5 you posted on if that will be through another investor coming in and refinancing  
6 the debt or if it will be an increase in payments to take out your debt early.  
7

8 51. Plaintiff did not accept these altered instruments and loan terms, as Defendants  
9 were already in default of the loan and its obligations and it had been called due.  
10

11 52. That Defendants have failed and refused to repay the loan or make any payments  
12 towards the amount owed. The loan investment documents, originally and as altered, were not a  
13 viable investment for the benefit of Plaintiff as Defendants never could have or intended to  
14 repay Plaintiff. The actions of Defendants, and each of them, were relied upon by Plaintiff and  
15 constitute fraud, deception, breach of contract, securities fraud and other violations as set forth  
16 in this Complaint.  
17

18 **FIRST CAUSE OF ACTION**  
19 **BREACH OF CONTRACT**  
20 **AGAINST ALL DEFENDANTS**

21 53. Plaintiff repeats and realleges paragraphs 1 through 52 and incorporates them by  
22 reference as though fully set forth herein.

23 54. That there exists valid and enforceable contracts between Plaintiff and the  
24 Defendants, as set forth above.

25 55. That a breach of said contracts has occurred on the part of the Defendants, as set  
26 forth above.  
27  
28

1           56. That Plaintiff has suffered damages as a result of said breaches of contract in an  
2 amount to be determined at trial.

3           57. That as a result of Defendants' actions, Plaintiff has been required to retain the  
4 services of an attorney to prosecute this action and, therefore, are entitled to an award of  
5 reasonable attorney's fees and costs incurred herein.  
6

7                                   **SECOND CAUSE OF ACTION**  
8                                   **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**  
9                                   **AGAINST ALL DEFENDANTS**

10           58. Plaintiff repeats and realleges paragraphs 1 through 57 and incorporates them by  
11 reference as though fully set forth herein.

12           59. Plaintiff entered into valid and existing contracts with Defendants, as set forth  
13 above.

14           60. Each and every contract in Nevada incorporates an implied covenant of good  
15 faith and fair dealing.  
16

17           61. In the contracts averred herein, Defendants owed to Plaintiff a duty of good faith  
18 and fair dealing.

19           62. Defendants breached their duty to Plaintiff by performing in a manner that was  
20 unfaithful to the purpose of the contracts.  
21

22           63. As a consequence of Defendants' conduct, Plaintiff's justified expectations were  
23 denied, and Plaintiff has sustained damages thereby in an amount to be proven at trial.

24           64. That as a result of Defendants' actions, Plaintiff has been required to retain the  
25 services of an attorney to prosecute this action and, therefore, are entitled to an award of  
26 reasonable attorney's fees and costs incurred herein.  
27  
28

**THIRD CAUSE OF ACTION  
FRAUDULENT OR INTENTIONAL MISREPRESENTATION  
AGAINST ALL DEFENDANTS**

65. Plaintiff repeats and realleges paragraphs 1 through 64 and incorporates them by reference as though fully set forth herein.

66. Defendants made numerous false representations to Plaintiff, as set forth above.

67. Said representations to Plaintiff were made with knowledge or belief that the representations were false or without a sufficient basis for making the representations.

68. Defendants intended to induce Plaintiff to act or refrain from acting based on the representations.

69. Plaintiff justifiably relied on said representations.

70. Plaintiff was damaged as a result of her justifiable reliance in an amount to be determined at trial.

71. That as a result of Defendants' actions, Plaintiff has been required to retain the services of an attorney to prosecute this action and, therefore, are entitled to an award of reasonable attorney's fees and costs incurred herein.

**FOURTH CAUSE OF ACTION  
CONSTRUCTIVE FRAUD  
AGAINST ALL DEFENDANTS**

72. Plaintiff repeats and realleges paragraphs 1 through 71 and incorporates them by reference as though fully set forth herein.

73. Under Nevada law, a confidential relationship exists where one reposes special confidence in another so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the former.

1           74. That Defendants owed an equitable duty to Plaintiffs arising from a confidential  
2 and fiduciary relationship when Plaintiff turned over her valuable business and control of her  
3 fortune to Defendants based on the Defendants' representations that Plaintiffs would receive  
4 substantial financial benefits.

5  
6           75. That Defendants breached that duty by misrepresenting material facts relating to  
7 the outcome and effects of Plaintiff's agreement to their investment scheme.

8           76. That Defendants further breached their duty by concealing material facts relating  
9 to the outcome and effects of their fraudulent investment scheme.

10  
11           77. That as a result of Defendants' fraud, Plaintiff sustained damages in an amount to  
12 be proven at trial.

13           78. That as a result of Defendants' actions, Plaintiff has been required to retain the  
14 services of an attorney to prosecute this action and, therefore, are entitled to an award of  
15 reasonable attorney's fees and costs incurred herein.

16  
17                   **FIFTH CAUSE OF ACTION**  
18                   **CONVERSION**  
19                   **AGAINST ALL DEFENDANTS**

20           79. Plaintiff repeats and realleges paragraphs 1 through 79 and incorporates them by  
21 reference as though fully set forth herein.

22           80. That Defendants exercised numerous distinct acts of dominion wrongfully  
23 exerted over Plaintiff's personal property, as set forth above.

24           81. That said acts of dominion were in denial of, or inconsistent with her rights in  
25 said property.

26           82. That said wrongful dominion by Defendants were in derogation, exclusion, or  
27 defiance of Plaintiff's title or rights.  
28

1           83. That as a result of Defendants' actions, Plaintiff has been required to retain the  
2 services of an attorney to prosecute this action and, therefore, are entitled to an award of  
3 reasonable attorney's fees and costs incurred herein.  
4

5                                   **SIXTH CAUSE OF ACTION**  
6                                   **SECURITIES FRAUD – NRS §§ 90.570 and 90.660 and SECTION 10(b) OF THE**  
7                                   **SECURITIES ACT OF 1933 and RULE 10(b)-5 as PROMULGATED THEREUNDER**  
8                                   **AGAINST ALL DEFENDANTS**

9           84. Plaintiff repeats and realleges paragraphs 1 through 83 and incorporates them by  
10 reference as though fully set forth herein.

11           85. Section 90.570, Subsection 2 of the Nevada Revised Statutes makes it unlawful  
12 for a person to make an untrue statement of a material fact or omit to state a material fact  
13 necessary in order to make the statements made not misleading in the light of the circumstances  
14 under which they are made. Section 90.660 of the Nevada Revised Statutes provides, in part,  
15 that a person who offers or sells a security in violation of Subsection 2 of Section 90.570 is  
16 liable to the person purchasing the security.

17           86. A violation of Section 10(b) of the Securities Act and Rule 10(b)-5 as  
18 promulgated by the SEC provides that it is fraud to make a false and misleading statement in  
19 connection with "the purchase or sale" of a security.  
20

21           87. As detailed in the General Allegations *supra*, Defendants, in order to induce  
22 Plaintiff to enter into a various agreements, made untrue statements of material fact and omitted  
23 to state material facts necessary in order to make the statements made not misleading in the light  
24 of the circumstances under which they were made, including without limitation those statements  
25 and omissions enumerated in this Complaint.  
26

27           88. That said agreements and loan documents constitute a security under Nevada  
28 state law and federal law and are a sale of securities to Plaintiff.

1           89.     The actions of Defendants operated as a fraud or deceit upon Plaintiff.

2           90.     As a result of Defendants' actions and omissions, Plaintiff has sustained damages  
3 in an amount to be proven at trial.

4  
5           91.     That as a result of Defendants' actions, Plaintiff has been required to retain the  
6 services of an attorney to prosecute this action and, therefore, are entitled to an award of  
7 reasonable attorney's fees and costs incurred herein.

8  
9                               **SEVENTH CAUSE OF ACTION**  
10                              **CONSTRUCTIVE TRUST**  
11                              **AGAINST ALL DEFENDANTS**

12           92.     Plaintiff repeats and realleges paragraphs 1 through 91 and incorporates them by  
13 reference as though fully set forth herein.

14           93.     That a confidential relationship exists between Plaintiff and all Defendants.

15           94.     That the retention of legal title and control over the funds belonging to Maity  
16 Medical Associates Defined Benefit Plan by Defendants would be inequitable.

17           95.     The existence of such a trust is essential to the effectuation of justice.

18           96.     That as a result of Defendants' actions, Plaintiff has been required to retain the  
19 services of an attorney to prosecute this action and, therefore, are entitled to an award of  
20 reasonable attorney's fees and costs incurred herein.

21  
22                              **EIGHTH CAUSE OF ACTION**  
23                              **VIOLATION OF 29 U.S.C. § 1001 *et seq.* (ERISA)**  
24                              **AGAINST ALL DEFENDANTS**

25           92.     Plaintiff repeats and realleges paragraphs 1 through 91 and incorporates them by  
26 reference as though fully set forth herein.

27           93.     That Defendants have denied Plaintiff her benefits under ERISA § 502(a)(1)(B).  
28

1           94.     That Defendants are in breach of their fiduciary duties to Plaintiff under ERISA  
2     § 502(a).

3           95.     That Defendants have knowingly participated in a scheme which denies Plaintiff  
4     her rights under ERISA § 502(a)(3).

5           96.     As a result of Defendants' actions and omissions, Plaintiff has sustained damages  
6     in an amount to be proven at trial.

7           97.     That as a result of Defendants' actions, Plaintiff has been required to retain the  
8     services of an attorney to prosecute this action and, therefore, are entitled to an award of  
9     reasonable attorney's fees and costs incurred herein.

10           **WHEREFORE**, Plaintiff prays for relief against Defendants, each of them, as follows:

11                           **ON ALL CAUSES OF ACTION**

12           1.     For compensatory damages in the principal amount in excess of One Million  
13     Dollars (\$1,000,000.00) to be proven at trial;

14           2.     For punitive damages in the principal amount in excess of One Million Dollars  
15     (\$1,000,000.00) to be proven at trial;

16           3.     For special damages in the principal amount in excess of One Million Dollars  
17     (\$1,000,000.00) to be proven at trial;

18           4.     For a Constrictive Trust over all funds and assets emanating from Plaintiff, no  
19     matter how titled or held.

20           5.     For attorney's fees and costs incurred;

21           6.     For all damages in an amount to be proved at trial;

22           7.     For costs of suit herein incurred;

- 1           8.     For reasonable interest on amounts due; and
- 2           9.     For any such other and further relief as this Court deems just and proper.

3                     Dated this 20 day of April, 2020.

4

5                                     HAROLD P. GEWERTER, ESQ., LTD.

6                                     

7                                     HAROLD P. GEWERTER, ESQ.

8                                     Nevada Bar No. 499

9                                     1212 So. Casino Center Blvd.

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12                                   Email: harold@gewerterlaw.com

13                                   *Attorney for Plaintiff*

14                                   *Smita Maity*

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**DEMAND FOR JURY TRIAL**

Plaintiff, hereby demands a Trial by Jury in the above-entitled matter.

DATED this 20<sup>th</sup> day of April, 2020.

HAROLD P. GEWERTER, ESQ., LTD.



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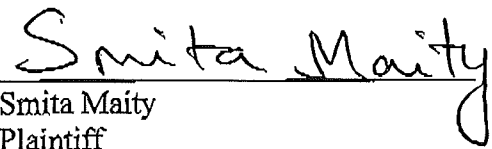
Email: harold@gewerterlaw.com

*Attorney for Plaintiff*

*Smita Maity*

**VERIFICATION**

I, Smita Maity, verify under penalty of perjury that I have read the above Complaint and its contents. I also verify that, to the best of my knowledge and recollection, the matters stated in the Complaint are true and correct.



Smita Maity  
Plaintiff